

File 875.4

TELEGRAPHIC MESSAGE

NAME OF AGENCY Environmental Protection Agency Enforcement Division		PRECEDENCE ACTION: INFO:	SECURITY CLASSIFICATION
ACCOUNTING CLASSIFICATION	DATE PREPARED 5/8/74	TYPE OF MESSAGE <input type="checkbox"/> SINGLE <input type="checkbox"/> BOOK <input type="checkbox"/> MULTIPLE ADDRESS	
FOR INFORMATION CALL			
NAME Diane Kriketan	PHONE NUMBER 52569		
THIS SPACE FOR USE OF COMMUNICATION UNIT			
MESSAGE TO BE TRANSMITTED (Use double spacing and all capital letters)			
TO: Dave Monday Environmental Protection Agency, Region IX Room 302 (415) 556-1408		RECD BY E.P.A. REGION IX COMM. CENTER MAY 9 11 18 AM '74	
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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

OFFICE OF
ENFORCEMENT AND GENERAL COUNSEL

MEMORANDUM

TO: Richard L. O'Connell, Director, Enforcement Division, Region IX

FROM: Deputy Assistant Administrator for Water Enforcement

SUBJECT: Ability of States to Modify or Enforce Permits Issued
During Period of Interim Authorization

ISSUE

The question has been raised as to whether the State of Hawaii has legal authority to (1) modify or (2) enforce any of the six permits issued by Hawaii during the section 402(a)(5) period of interim authorization. In my opinion, there is no question that Hawaii may both modify (subject to EPA's section 402(d) right to object) and enforce its interim permits.

DISCUSSION

On February 5, 1973, Hawaii was granted interim authorization by the Administrator to issue NPDES permits under section 402(a)(5) of the FWPCA. The legal basis for the issuance of such permits would be state law. The effect of the Administrator's authorization was to make properly-issued state permits valid as NPDES permits meeting the requirements of section 402.

STATE MODIFICATION OF INTERIM PERMITS

If state law so provides, Hawaii may modify its state-issued interim permits. Of course, any such modification is subject to approval by EPA as provided by section 402(d). Any such modification which receives EPA approval or for which EPA has waived its approval rights is valid for the purposes of section 402. Should EPA object to the modification, the modified permit would be valid under state law but would not be valid as an NPDES permit. In the latter case, for the purposes of section 402, the permittee would still be subject to the original permit.

STATE ENFORCEMENT OF INTERIM PERMITS

Similarly, if state law so provides, Hawaii may enforce its interim NPDES permits. There is no reason why the six permits issued as NPDES permits by Hawaii during the interim authorization period should be any less enforceable than any other Hawaii state permit. Certainly the fact that Hawaii no longer has the authority to issue interim permits does not preclude Hawaii from enforcing its interim permits duly issued. To assert otherwise is to make the interim permit a license to pollute as the permittee apparently would be immune from prosecution under state law.

Richard H. Johnson

cc: Mr. Robert Taylor
Assistant Attorney General
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State Capitol
Honolulu, Hawaii 96813
